

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

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AL EVERITT BOYETT, JR.,
PLAINTIFF

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* CIVIL ACTION NO. 2:05-CV-966-D

*

V.
ANTHONY CLARK, SHERIFF, ET AL.,
DEFENDANTS

*

*

MOTION TO STRIKE AFFIDAVITS AND
DOCUMENTS SUBMITTED IN ANSWER AND
SPECIAL REPORT

COMES NOW AL BOYETT JR, PRO SE IN THE ABOVE STYLED - CAUSE AND
ASKS THIS HONORABLE COURT FOR FAVORABLE CONSIDERATION IN THIS MOTION AND
SUBMITS THE FOLLOWING IN SUPPORT OF AS FOLLOWS:

- 1) THE PLAINTIFF FILED HIS COMPLAINT ON OCTOBER 7, 2005 AND
HIS AMENDED COMPLAINT ON FEBRUARY 8, 2006.
- 2) ON FEBRUARY 13, 2006 THE COURT ORDERED THE DEFENDANTS TO
FILE A ANSWER AND SPECIAL REPORT ADDRESSING THE ALLEGATIONS IN THE
AMENDED COMPLAINT.
- 3) IN THAT ANSWER AND SPECIAL REPORT WERE THE SWORN
AFFIDAVITS OF DR. WILLARD MCWHORTER; M.D., NURSE JAMIE MITCHELL,
AND L.P.N. ANNETTE CAIN.

- 4) FEDERAL RULES OF CIVIL PROCEDURE 56(E) ARE CLEARLY EXPLICIT THAT FOR AFFIDAVITS TO BE ALLOWED INTO THE RECORD THEY MUST AFFIRMATIVELY SHOW THAT THE AFFIANT IS COMPETENT TO TESTIFY.
- 5) NOWHERE IN THE AFFIDAVIT OF DR. MCWHORTER, NURSE JAMIE MITCHELL, OR L.P.N. ANNETTE CAIN DOES IT AFFIRMATIVELY SHOW THAT THEY ARE COMPETENT TO TESTIFY, THUS, A JURISDICTIONAL DEFECT EXISTS PROHIBITING THEIR ENTRY INTO THE RECORD.
- 6) IN THIS COURT'S ORDER TO BOTH PARTIES FILED ON MARCH 20, 2006. ON PAGE 2 OF THE ORDER IT REMINDS BOTH PARTIES THE REQUIREMENTS FOR AFFIDAVITS TO BE ALLOWED IN THE RECORD. IT STATES IN PART:
- " THESE AFFIDAVITS SHOW AFFIRMATIVELY THAT THE AFFIANT IS COMPETENT TO TESTIFY TO THE MATTERS STATED IN THE AFFIDAVIT " (OUR EMPHASIS)
- 7) THESE AFFIDAVITS ARE HIGHLY PREJUDICIAL AND SOME OF THE STATEMENTS ARE OUTRIGHT LIES AND A FABRICATION TO GAIN A TACTICAL ADVANTAGE IN ANY JUDGMENT PHASE OF THE PLEADINGS.
- 8) THE PERSON WHO COMPILED THE MEDICAL RECORDS, L.P.N. ANNETTE CAIN, HER AFFIDAVIT STATES:
- " THESE RECORDS WERE MADE AT THE TIME OF THE EVENTS REFERENCED THEREIN AND WERE MADE AND KEPT IN THE REGULAR COURSE OF SHP'S BUSINESS "

NO WHERE IN HER AFFIDAVIT DOES IT STATE SHE WAS COMPETENT TO TESTIFY. THE PLAINTIFF ASKS THIS COURT TO CONSIDER THAT THE GRIEVANCE FORMS HE FILED WITH SHP AND SUBMITTED IN THE PLAINTIFFS AMENDED COMPLAINT ARE CONVENIENTLY WITHHELD OR MISTAKENLY LEFT OUT, WHICH IN EITHER SITUATION WOULD CAST A SERIOUS DOUBT OF HER COMPETENCY TO TESTIFY AS TO THE ACCURACY OF THE ASSEMBLY OF SAID DOCUMENTS WITHOUT HER AFFIRMATIVELY STATING SO IN HER AFFIDAVIT

PRAYER FOR RELIEF

WHEREFORE, THE PLAINTIFF PRAYS THIS COURT ORDER THE AFFIDAVITS OF DR. MCWHORTHER M.D., NURSE JAMIE MITCHELL, LPN ANNETTE CAIN BE DEEMED AS STRICKEN FROM THE RECORD WITH PREJUDICE AND ANY DOCUMENTS COMPILED BY ANNETTE CAIN LIKE WISE BE STRICKEN FROM THE RECORD WITH PREJUDICE FROM THERE ANSWER/SPECIAL REPORT.

DONE THIS 28th DAY OF MARCH, 2006.

RESPECTFULLY SUBMITTED,

AL E. Boyett Jr.
AL E. BOYETT JR.

CERTIFICATE OF SERVICE

I SWEAR I HAVE SENT A COPY OF THIS MOTION TO THE
BELOW LISTED PARTIES BY PLACING A COPY IN THE U.S. MAIL
FIRST CLASS POSTAGE AFFIXED THIS 28th DAY OF MARCH,
2006.

AL E. Boyett
AL E. BOYETT

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